

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.82 of 2011

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Shri Krishna Medical College & Hospital (S.K.M.C.H.) Muzaffarpur,
through the Superintendent situated at Village & P.O. Uma Nagar, P.S.
Ahiyapur, District- Muzaffarpur.

.... Defendant No.2/Appellant/Appellant

Versus

1. Prahlad Kumar Singh S/O Late Nand Kishore Singh, Resident Of Village
Rampur, P.O. And P.S. Sasa Musha, District Gopalganj. At Present At
Mohalla Akharaghat, P.O. Town, Police Station Ahiyapur, District
Muzaffarpur.

2. Pradyumn Singh S/O Late Nand Kishore Singh Resident Of Village
Rampur, P.O. And P.S. Sasa Musha, District Gopalganj. At Present At
Mohalla Akharaghat, P.O. Town, Police Station Ahiyapur, District
Muzaffarpur.

3. Shailendra Singh S/O Late Nand Kishore Singh Resident Of Village
Rampur, P.O. And P.S. Sasa Musha, District Gopalganj. At Present At
Mohalla Akharaghat, P.O. Town, Police Station Ahiyapur, District
Muzaffarpur.

4. Smt. Urmila Singh D/O Late Nand Kishore Singh And W/O Sri
Balbhadra Singh Resident Of Village Lara Pipra, P.O. And P.S. Lara,
District Deoriya (Uttar Pradesh).

5. Sudip Singh S/O Jitendra Singh Resident Of Village Gajadharpur, Police
Station Usak Bazar, District Siddharth Nagar (U.P.).

6. Sandeep Singh S/O Jitendra Singh Resident Of Village Gajadharpur,
Police Station Usak Bazar, District Siddharth Nagar (U.P.).

Prahlad Kumar Singh & Ors

.... Plaintiff/Respondent 1st Party/Respondent 1st Party

7. State of Bihar, through the Collector, Muzaffarpur, At, P.O. & P.S.
Muzaffarpur, District- Muzaffarpur

..... Defendant No.1/Respondent 2nd Party/Respondent 2nd Party

8. Shri Raju Singh S/O Late Lakshmeshwar Singh Resident Of Mohalla
Akharaghat, P.O. Town & Police Station Ahiyapur, District Muzaffarpur.

9. Shri Babloo Singh S/O Late Lakshmeshwar Singh Resident Of Mohalla
Akharaghat, P.O. Town & Police Station Ahiyapur, District Muzaffarpur.

10. Shri Hardeo Singh S/O Late Jungle Singh Resident Of Mohalla
Akharaghat, P.O. Town & Police Station Ahiyapur, District Muzaffarpur.

11. Shri Indradeo Singh S/O Late Jungle Singh Resident Of Mohalla
Akharaghat, P.O. Town & Police Station Ahiyapur, District Muzaffarpur.

12. Shri Prabhu Narayan Singh S/O Late Jungle Singh Resident Of Mohalla
Akharaghat, P.O. Town & Police Station Ahiyapur, District Muzaffarpur.

with

Second Appeal No.388 of 2011

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The State Of Bihar, through the Collector, Muzaffarpur, At, P.O. And P.S.

Muzaffarpur, District Muzaffarpur.

.... Defendant No.1/Respondent 2nd Party/Respondent 2nd
Party/Appellant

Versus

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1. Prahlad Kumar Singh S/O Late Nand Kishore Singh Resident Of Village Rampur, P.O. And P.S. Sasa Musha, District Gopalganj. At Present At Mohalla Akharaghat, P.O. Town, Police Station Ahiyapur, District Muzaffarpur.
 2. Pradyumn Singh S/O Late Nand Kishore Singh Resident Of Village Rampur, P.O. And P.S. Sasa Musha, District Gopalganj. At Present At Mohalla Akharaghat, P.O. Town, Police Station Ahiyapur, District Muzaffarpur.
 3. Shailendra Singh S/O Late Nand Kishore Singh Resident Of Village Rampur, P.O. And P.S. Sasa Musha, District Gopalganj. At Present At Mohalla Akharaghat, P.O. Town, Police Station Ahiyapur, District Muzaffarpur.
 4. Smt. Urmila Singh D/O Late Nand Kishore Singh And W/O Sri Balbhadra Singh Resident Of Village Lara Pipra, P.O. And P.S. Lara, District Deoriya (Uttar Pradesh).
 5. Sudip Singh S/O Jitendra Singh Resident Of Village Gajadharpur, Police Station Usak Bazar, District Siddharth Nagar (U.P.).
 6. Sandeep Singh S/O Jitendra Singh Resident Of Village Gajadharpur, Police Station Usak Bazar, District Siddharth Nagar (U.P.).

..... Plaintiff/Respondent 1st
Party/Respondent 1st Party/Respondent 1st
Party.

7. Shri Raju Singh S/O Late Lakshmeshwar Singh Resident Of Mohalla Akharaghat, P.O. Town & Police Station Ahiyapur, District Muzaffarpur.
8. Shri Babloo Singh S/O Late Lakshmeshwar Singh Resident Of Mohalla Akharaghat, P.O. Town & Police Station Ahiyapur, District Muzaffarpur.
9. Shri Hardeo Singh S/O Late Jungle Singh Resident Of Mohalla Akharaghat, P.O. Town & Police Station Ahiyapur, District Muzaffarpur.
10. Shri Indradeo Singh S/O Late Jungle Singh Resident Of Mohalla Akharaghat, P.O. Town & Police Station Ahiyapur, District Muzaffarpur.
11. Shri Prabhu Narayan Singh S/O Late Jungle Singh Resident Of Mohalla Akharaghat, P.O. Town & Police Station Ahiyapur, District Muzaffarpur.

..... Defendant 2nd
Party/Respondent 3rd Party/Respondents 3rd
Party/Respondent 2nd Party.

12. Shri Krishna Medical College & Hospital (S.K.M.C.H.) Muzaffarpur, through the Superintendent Situated At Village & P.O. Uma Nagar, Police Station Ahiyapur, District Muzaffarpur.

.... Defendant No.2/Appellant/Appellant/Respondent 3rd Party

Against the judgment dated 17.2.2005, passed by the court of subordinate judge 4th Muzaffarpur in Title Suit No.33/99

Appearance :

(In SA No.82 of 2011)

For the Appellants : Mr. Ashok Kumar, Adv.
For the Respondents : Mr. Anil Kumar Jha, Sr. Adv.
Mr. Dhruv Nr. Singh, Sr. Adv.
Mr. Jitendra Pd. Singh
Mr. Kundan Bahadur Singh, SC 22

(In SA No.388 of 2011)

For the Appellant : Mr .Anil Kumar Jha, Sr .Adv.
For the Respondents : Mr. Sant Kr. Mishra, Adv.
Mr. Shashi Bhushan , Adv.
Mr. Birendra Kant Choudhary, Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: -03-2015

These two Second Appeals arise out of the judgment dated 17.2.2005, passed by the court of subordinate judge 4th Muzaffarpur in Title Suit No.33/99. The defendants in the suit are the appellants and the sole respondent is the plaintiff.

The occasion for the Division Bench to hear these second appeals arose on account of the fact that, a Public Interest Litigation was initiated in relation to the encroachment into the campus and properties of Sri Krishna Medical College & Hospital, the 2nd defendant in the suit and one of the appellants. In the course of hearing the writ petition, all the matters connected with the land of the said college were clubbed. Since the title suit No.39 of

1999 is in relation to an item of property purchased by the college, these two second appeals filed against the Judgment therein were also made part of the batch.

The facts that gave rise to the filing of these second appeals are as under:

For the sake of convenience, the parties are referred to, arrayed as in the suit.

The plaintiff, filed the suit for the relief of (a) declaration to the effect that she holds title over the suit schedule-III property (mentioned as Schedule-II in the judgment of the trial court), and (b) that the sale deeds executed in respect of the said property in favour of the second defendant are forged, fabricated, inoperative, null and void and not binding upon her. She filed the genealogy of her family. Shorn of other details, it is to the effect that one Mr. Jungal Singh had five sons namely Surajdeo Singh (father of the plaintiff), Lakshmeshwar Singh (father of defendants 3 and 4), Hardeo Singh (the defendant No.5), Indradeo Singh (Defendant No.6) and Babu Prabhu Narain Singh (defendant No.7). Surajdeo Singh is said to have died leaving behind his wife and the plaintiff herein.

According to the plaintiff, the property held by Jungal Singh was partitioned among his five sons during the lifetime of Shri Surajdeo Singh and he was in



possession and enjoyment of the property that fell to his share and, shown in Schedule-II, till his death. She has also stated the nature of steps that have taken place during the revisional survey. In the family partition, the land in Touzi No.4303 covering 10 Bighas, 16 Katthas, equal to 9.82 decimals, is said to have fallen to the share of her father and remaining land has fallen to the shares of other four brothers. Plaintiff alleged that the defendants 3 to 7 have executed sale deeds in favour of 2nd defendant in respect of lands in Schedule-III, which are part of Schedule-II land, and have fallen to the share of her father. It was stated that she came to know about the sales, only in the last week of January, 1998.

Before the trial court, defendants 1 and 2 were treated as the 1st set; and 3 to 7 as the 2nd set. Two different written statements were filed by them.

In their written statements, defendants 3 to 7 stated that the suit is not maintainable and that it is barred by limitation. They have also pleaded that the principles of estoppel, acquiescence, waiver and adverse possession get attracted. They stated that the sale deeds were executed in favour of the 2nd respondent only in respect of the land that has fallen to their share and after the sale, huge building for the medical college was constructed on the said land;



about 25 years, prior to the institution of the suit. They have also raised an objection as to the value of the suit as well as the maintainability of the suit in the context of Section-34 of the Specific Relief Act. It was mentioned that the possession of the college over the suit land, is evidenced by the revenue records and the suit was filed in speculative manner. They have also furnished the details of the partition that has taken place amongst the sons of Jungal Singh in the form of schedules A to E, in the written statement.

The defendants 1 and 2 have also filed written statement, almost on the same lines.

The trial court decreed the suit, through its judgment dated 17.2.2005. Aggrieved by that, both the sets of defendants filed Title Appeal Nos.6/05 and 7/05 in the court of District Judge, Muzaffarpur. The lower appellate court dismissed the appeals, through common Judgment dated 4.11.2010. Hence, these two Second Appeals under Section-100 of C.P.C.

Sri Anil Kumar Jha and Sri Ashok Kumar, learned counsel for the defendants (appellants), submit that several substantial questions of law arise for consideration in these second appeals, and that the judgment rendered by the trial court and the lower appellate court cannot be

sustained in law. They submit that a suit for mere declaration of title, without claiming the relief, either of recovery of possession or of perpetual injunction, was not maintainable in law and hit by Proviso to Section-34 of the Specific Relief Act.

They further submit that the suit was hopelessly barred by limitation since it was filed more than quarter of century, after the sale deeds were examined, and the trial court, finally did not discharge its obligation under Section-3 of the Limitation Act at the time of numbering the suit and secondly, not dealing with the question even after a specific plea was raised in the written statement, and an issue was framed on this aspect. They submit that such an important objection was brushed aside, by making certain irrelevant and general observations. It is also the plea of the learned counsel for the appellants that in the context of limitation, the plaintiff was not clear as to the article of Schedule to the Limitation Act which is to be invoked; It is argued that when the plaintiff has specifically taken the plea of knowledge, in this behalf; her evidence was essential, but she did not enter the witness box at all.

Learned counsel further submit that the trial court, as well as the lower appellate court, have undertaken extensive discussion on the issue pertaining the



possession, though no prayer in that behalf was made in the suit, and have recorded findings detrimental to the interests of the defendants. They further submit that the adjudication undertaken by the courts below is contrary to the basic tenets inasmuch as almost the entire burden in the suit was placed upon the defendants. It is also urged that except making a general prayer in relation to sale deeds, neither date thereof was mentioned nor any other particulars were furnished and that though the plaintiff is not a party to the sale deeds, she raised the plea of forgery, impersonation and the courts below have entertained such irrelevant claims.

Shri Sant Kumar Mishra, Shri Shashi Bhushan, Shri Birendra Kant Choudhary, Mr. Dhruv Nr. Singh, Mr. Jitendra Pd. Singh and Mr. Kundan Bahadur, learned counsel for the plaintiff, on the other hand, submit that the possession of the suit property is with their client and on account of the same, she did not feel the necessity of claiming any other relief except the one, of declaration of title. As regards the question of limitation, learned counsel submit that as soon as the plaintiff came to know about the sale deeds, she instituted the suit and article-57 of the schedule to the limitation Act gets attracted in matters of this nature. They further submit that the trial court and

the lower appellate court had to deal with the question of possession, since the defendants claimed to be in possession and that no exception can be taken to it.

Learned counsel further submit that once the relationship between the parties and the factum of partition is not disputed, the burden rests on the defendants 2 to 3 to establish that the property covered by the sale deeds fell to their share. They submit that the concurrent findings of fact recorded by the trial court and the lower appellate court cannot be interfered with in the Second Appeal and that no question of law, much less substantial questions of law arise for consideration in these two appeals. He placed reliance on certain precedents which are mostly judgments rendered by this Court.

The suit was filed for the relief of declaration of title of the plaintiff in property under Schedule-II and for declaration that the sale deeds in respect of Schedule-III property are forged, fabricated, inoperative, null and void and not binding upon her. The gist of the pleadings, the nature of reliefs granted by the trial court and the lower appellate court, the contentions of the parties before this court, are indicated in the preceding paragraphs. On the basis of the pleadings, before it, the trial court framed the following issues for its consideration.

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1. Is the suit as framed maintainable?
 2. Has the plaintiff got cause of action and right to sue?
 3. Whether the suit is barred by law of limitation, waiver, acquiescence and adverse possession?
 4. Whether the suit has been properly valued and the court fee paid sufficient?
 5. Whether the suit is hit by Section 34 of the Specific Relief Act?
 6. Whether the suit is bad for non-joinder of parties?
 7. Whether the suit is hit u/s 80 C.P.C.?
 8. Whether the sale deeds executed by the defendants are legal, valid, effective and correct as propounded by the defendants or the same are wrong, collusive, forged, fabricated and illegal as propounded by the plaintiff?
 9. Whether the property under dispute are coming in possession of the plaintiff?
 10. Whether the plaintiff was in knowledge about the execution of alleged sale deeds as propounded by the defendants?
 11. Whether the plaintiff is entitled to decree as prayed for?
 12. Is the suit property valued and the court fee paid sufficient?
 13. Has the plaintiff got any title and possession over the disputed land?
 14. To what other relief or reliefs plaintiff is entitled to?

On behalf of the plaintiff, P.Ws.1 to 17 were examined and exhibits 1 to 13 were filed. On behalf of the 1st set of defendants, D.Ws.1 to 6 were examined and Exhibits-A and B were filed. On behalf of the 2nd set of defendants i.e. 3 to 7, D.Ws.1 to 8 were examined. The trial

court answered almost all the issues in favour of the plaintiff and decreed the suit.

The lower appellate court did not frame any points for consideration, as required under Rule-31 of order XLI C.P.C. however, it has touched all the issues framed by the trial court and has undertaken extensive discussion. Therefore, the omission to frame the points need not be treated as a serious infirmity.

In view of the extensive arguments advanced by the learned counsel for the parties, we find that the following substantial questions of law arise for consideration:-

- (a) Whether the suit for mere declaration of title, without any other ancillary relief/reliefs was maintainable ?.
- (b) Whether the trial court did not fail to discharge its duty under Section 3 of the Limitation Act ?.
- (c) Whether in a suit for declaration simplicitor, the trial court and the lower appellate court can deal with the question of possession and record any findings in relation thereto ?, that too when the plaintiff did not even feel the necessity to amend the plaint.

(d) Whether in a suit for declaration of title, the burden of proof can be placed upon the defendants?.

Here itself, we make it clear that while admitting the Second Appeals, this Court framed substantial questions of law and what we framed above are for the purpose of undertaking a pointed discussion.

The first question

The plaintiff filed the suit for the relief of declaration simplicitor. The relief is in two parts: declaration of title in respect of Schedule-II property, and declaration as to the validity of the sale deeds in respect of Schedule-III property. To be precise, the plaintiff prayed for the following reliefs:

(a) That on consideration of the facts stated above, the Court be pleased to hold and declare the title of the plaintiff over Schedule-III property of the plaintiff with holding that the sale deeds executed with respect to Schedule-III of the plaint in favour of the defendants 1st party are forged, fabricated, inoperative, null and void and not binding upon her.

No relief, whatever; be it in the form of recovery of possession, or in the form perpetual injunction, was

claimed.

Section-34 of the Specific Relief Act reads as under:

“34. Discretion of court as to declaration of status or right- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

From a perusal of the Proviso, it becomes clear that if a plaintiff, being able to seek further relief than mere declaration, fails to do so, the relief of mere declaration cannot be granted.

Failure to claim the relief ancillary or subsidiary may not result in the suit becoming untenable. However, it would entail upon the competence of the Court to grant relief. There may be instances where the plaintiff may have felt it adequate to file a suit for mere declaration, at the initial stage.

However, at least when the defendant challenges the very possession and right of the plaintiff over the suit property, the consequential relief, whether in the form of recovery of possession or perpetual injunction, must be

claimed by the plaintiff. Failure to do so would disentitle him to claim the relief, even of declaration.

In the instant case, the plaintiff was not clear as to the relief itself was not clear. Though in the body of the plaint the relief of declaration of title was claimed in respect of lands in Schedule-II, and the one in relation to documents; in respect of Schedule-III; in the prayer portion both the claims were claimed only as regards Schedule-III. This, however, may not be of much consequence.

The pleadings of the parties, as well as the contents of the issues, disclose that one of the most contentious issues between the parties was that of possession. Voluminous oral and documentary evidence were adduced on that. When such was the serious contest about the possession, suit for mere declaration of title was not maintainable at all. Though both the sets of defendants raised specific objections in this regard, the trial court glossed over it.

Issue No.6 which was framed in this behalf, was dealt with, along with issue Nos.1,2,4,5,6 and 14. The entire discussion on so many importance issues was confined to the following paragraphs:

“XIX. The first issue is whether the suit as framed is maintainable; the second is, has the plaintiff got cause of action or right to sue; third is whether the suit is properly valued and the court fee paid is

sufficient; next is whether the suit is bad for non-joinder of parties and last is to what other relief or reliefs plaintiff is entitled ? All these contentions have been ornamentally made in the pleadings of the defendants because no specific reason is assigned making room for discussion on these issues. Under this situation, I give no comment against these issues and as such these are disposed of.

Thus, having examined the case carefully and after scrutinizing the evidence on record the issues framed out since are decided in favour of the plaintiff and since the defendants independently and jointly have not been able to substantiate what they have brought in their pleadings, it is hereby held and:-

XX. That this suit be and the same is decreed on contest with cost in favour of the plaintiff declaring that she held title and possession over the schedule II land of the plaint and that sale deeds executed with respect to schedule III of the plaint in favour of the defendant 1st party are forged, fabricated, inoperative, null & void and not binding upon the plaintiff. The advocates- fee Rs.32 and Adv. Clerk's fee Rs.16 are also allowed in favour of the plaintiff. ”

Thus, according to the trial court, a) all these questions have been ornamentally made in the pleadings of the defendants, b) no specific reason is assigned, making room for discussion on these issues, and c) it gives no comment against these issues. There cannot be a worse form of discussion on such important issues. Here itself, it is necessary to mention that in para-33 of the written statement, filed by respondents 3 to 7 the following pleas were raised:

- i) That the suit is hit by Section-34 of the Specific Relief Act.
- ii) In para-33 they pleaded “ the medical

college has acquired perfect title and possession thereon.”

It has also been pleaded elaborately that the suit is not maintainable at all since, it is hit by provisions of Section 34 of the Specific Relief Act.

When such was the clarity of the plea raised by the defendants, the trial court has chosen to ignore or gloss over the vital issues.

The lower appellate court dealt with that aspect in paragraph Nos.22, 23 and 24. The discussion up to paragraph-23 was in relation to a judgment rendered by the High Court of Jharkhand in 2004 C.L.T 50. That was a case in which the plea of Section-34 of the Specific Relief Act was raised for the first time in the second appeal and it was accordingly rejected. The lower appellate court in this case, however, summed up the discussion in paragraph-24 as under:

“24. In the present case also, the plaintiff has stated that the land mentioned in schedule-II of the plaint fell exclusively in the share of her father/mother and she has been coming in peaceful possession. The defendants also admitted the factum of partition and grant of equal share to each five brothers. Even at the time of execution of sale deed, the defendants-IInd set admitted the factum of partition and allotment of equal share among all the five brothers in all the ancestral property but defendants IInd set executed the sale deed beyond their share and the sale deeds included the land falling in the share of the plaintiff. Therefore, in such circumstances, I find

that if a simple suit for declaration of title sought for and the court below has found the possession of the plaintiff over the disputed land and the sale deed executed by the defendants is set illegal and bad, the suit is not barred u/s 34 of the Specific Relief Act. Hence, I do not find any force in the contention of the learned Counsel for the appellant.”

Not a syllable was said about the requirement under proviso to Section-34 of the Specific Relief Act. A patent lacuna that was glaringly present, was sought to be overcome with reference to finding on question of possession. In fact, the approach of the lower appellate court amounts to begging the question.

There is a definite purpose in placing the restriction, on filing of suits for mere declaration. The adjudication by a Court, which involves recording of evidence, and examination of law, cannot be just for the sake of it. The party which seeks declaration must have a genuine necessity or grievance and the same can be reflected in the form of ancillary reliefs. Therefore, we hold that the suit as presented by the plaintiff was hit by Proviso-2 to Section-34 of the Specific Relief Act.

The second question:

The importance of limitation, in instituting the suits, hardly needs any emphasis. Even if a party has an enforceable right in his favour, he cannot claim the relief or



remedy, unless he approaches the Court within the time stipulated thereafter. The question as to whether a suit is filed within the period of limitation, is a mixed question of fact and law. A civil court, has any way, to determine the question of limitation, on the basis of the pleadings of the parties, and their evidence. Apart from that, the Limitation Act places an obligation on the Court itself, to verify and satisfy itself, whether the suit presented before it is filed within limitation. Section-3 of the Act reads as under:

3. Bar of Limitation.—(1) Subject to the provisions contained in [sections 4](#) to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Thus, not only when a party failed to raise the question of limitation, but also at the time of numbering of suit, a Court is required to satisfy itself about the same.

While acting under Section-3, the Court has to take the contents of the plaint on their face value. The exercise in this behalf is akin to the one under Rule-11 of Order VII of C.P.C. which deals with the rejection of plaint.

The plaintiff in the instant case, did not mention the particulars of the sale-deeds as regards which the relief of declaration was claimed. The question as to whether the relief in relation to the sale-deeds could have been claimed under Section-34 simplicitor, would be dealt with, at a later

stage. However, when the relief has virtually the effect of nullification of a sale-deed, the first and foremost question that would arise for consideration is whether the suit is filed within the limitation. The plaintiff is required to furnish the dates of sale deeds. Even if it is argued that the suit can be filed within 3 years from the date of knowledge, he must invariably state the date of sale-deeds, or the date of registration thereof. This is particularly so, under article-59 of Schedule 1 to the Limitation Act.

On being asked as to which article of Schedule of the Limitation Act has been relied upon by the plaintiff, the learned counsel submitted that it was under Article-56. It reads as under:

<u>Description of suit</u>	<u>Period of limitation</u>	<u>Time from which period begins to run</u>
To declare the forgery of an instrument issued or registered.	Three years	When the issue or registration becomes known to the plaintiff.

A perusal of this Article discloses that the date of registration or the date of knowledge becomes relevant. In either case, the dates of knowledge as well as dates of registration, must be mentioned. If there is failure on the part of the plaintiff to mention the dates of registration of the documents, she could not have invoked Article-56 of Schedule-1 of the Limitation Act. It is a different matter

that the relief of declaration as to forgery of an instrument can be claimed only by a person who is shown as a party to the document, but not by a third party. Once the plaint itself was bereft of any details as to the dates of the documents as regards which the plaintiff claimed relief, the trial Court ought not to have numbered the suit at all.

Closely related to this discussion, is the factum of knowledge about the documents which were executed about quarter of a century before the suit was filed. That could have been spoken to, only by the person who acquired the knowledge, i.e. the plaintiff. However, she did not enter the witness box. Even on facts, the plaintiff failed to satisfy the Court that the suit was filed within the limitation. Therefore, this point is also answered in favour of the appellants.

The third question

It is, in a way, related to the first question. It has already been mentioned that the suit was filed for the relief of mere declaration. The defendants emphatically pleaded that not only the possession is with the Medical College, but also huge building for the College as well as nurses' quarter were constructed 25 years ago. If the plaintiff wanted to contest this finding, she could have done so only by amending her plaint, incorporating the relief of recovery



of possession or perpetual injunction. However, without there being any such amendment, the trial court framed Issue Nos.9 and 13 on that aspect. This was totally impermissible in law. Of all the issues, Issues 9 and 10 were discussed extensively under paragraphs XV and XVI, running into ten closely printed pages. The recitals in various sale-deeds marked as exhibits 9(a) to 9(k) were analysed. The plaintiff did not file a rejoinder contradicting the plea that the Medical College and staff quarters were constructed on the social property. The trial court, in a way went into the question of equity or the propriety of the partition, pleaded by defendants 3 to 7. More surprising is the fact that the trial court has gone to the extent of examining the details of the partition pleaded in the written statement and observed as under:

“....To be more clear about it, schedule II land is claimed allotted in the exclusive share of late Surajdeo Singh, the father of the plaintiff after partition in their brothers. This is also the land claimed as one share out of Schedule I of the plaint. What I find is that schedule I of the plaint has total area of 49 Acres 131/2 decimal and schedule II land, total is 09Acres 82 decimal and 7 Acres 18.601/2 land is said to have been the area which appertained to the land under dispute transferred to the SKMCH through alleged sale deeds.”

The discussion on the issue Nos.8, 9, 11 and 13 was summed up by the trial court as under:

“.... Now since this is the position, I find no alternative but to hold reasonably that the sale



deeds executed by the defendant IInd Party with respect lands of Rasulpur Syed Wazid are wrong, collusive, forged, fabricated and illegal to the extent of plaintiff's right, title and interest ignored, in that property; it is further established as not being negated that property in dispute is coming in possession of the plaintiff and her right, title and interest over the property in dispute is declared true and genuine. It is as thus issues no.8, 9, 11 and 13 are decided in favour of the plaintiff and against the defendants Ist and IInd party."

When no relief as to the recovery of possession or perpetual injunction was claimed in the plaint, there was absolutely no justification for framing any issues, much less to record findings, in that behalf. Further, not a word was said by the trial court or lower appellate court about the existence of buildings on the suit property. The lower appellate court did not address this aspect at all. We, therefore, hold that there was no basis or justification for the trial court in framing any issue on the question of possession over the social property and recording a finding thereon in favour of the plaintiff, and approval of the same, by the lower appellate court.

Fourth question

The basis for the claim of the plaintiff was the alleged allotment of the suit schedule II property, in favour of her father, in a family partition. No document, whatever, was placed in relation thereto. The burden squarely rested upon the plaintiff to prove title to the property or the relief



of declaration as regards the sale deeds. The trial court and lower appellate court, however, placed the burden in that behalf, upon the defendants. The reason assigned by them is that the defendants did not dispute the relationship of the parties and of the partition, and as such, the burden to disprove the facts pleaded by the plaintiff rested upon them.

This is on account of misinterpretation of the provisions of Chapter-7 of the Evidence Act. The basic principle that runs across the various Sections of that chapter is that the burden to prove a fact would rest upon a party who stands to lose, if the said fact is not proved. It is the plaintiff who came to the Court for declaration of title and she has to prove the facts pleaded by her. It is only the suits like those, instituted for recovery of money wherein the defendant does not dispute the factum of execution of the promissory note, that the burden would rest upon him to prove the case of the plaintiff, such as by taking the plea of want of consideration or limitation. The basis for that approach is the presumption, provided for under the Negotiable Instruments Act as to the contents of a negotiable instrument, if the execution thereof is not disputed.

In the case on hand, the partition pleaded by the



plaintiff on the one hand, and the one pleaded by defendants, on the other hand were totally different. The defendants furnished the details of partition by reproducing the schedules which, in turn, reflected the allotment of properties to the respective branches. In contrast, the plaintiff, did not furnish any particulars nor did she file any rejoinder, disputing the schedules that were mentioned in the written statement. No person connected with the partition of the family was examined by the plaintiff, as a witness. Still the trial court and lower appellate court have chosen to place the burden on the defendants to prove their case. More astonishing is the fact that by recording a finding as to the propriety, and not the factum of partition pleaded by the defendants, the trial court and lower appellate court have taken the case of the plaintiff as proved. In a way, it can be said that their approach was perverse. Added to that, the plaintiff did not enter the witness box for being cross-examined about the facts pleaded by her in relation to the partition or as to the plea of limitation. Therefore, we do not hesitate to answer this substantial question of law, also in favour of the defendants.

On an overall assessment, we find that the suit was filed in a speculative manner by the general power of

attorney holder of the plaintiff, once he came to know that the property, which was purchased by the 2nd defendant, Medical College, in the year 1971, has become valuable. Except subscribing her signature on the plaint, for whatever consideration, the plaintiff, an old woman, did not do anything and the entire care of the case was taken by the agency which had an eye on the valuable property of the Medical College. The suit suffers from serious legal infirmities, some of which have been demonstrated by us in the form of substantial questions of law.

We, therefore, allow the Second Appeals and set aside the judgment and decree dated 17.2.2005 and 7.3.2005 respectively, passed by the trial court in Title Suit No.33 of 1999, as affirmed by the lower appellate court through Judgment dated 4.11.2010 in Title Appeal Nos. 6/2005 and 7/2005.

Interlocutory application, if any, stands disposed of.

However, there shall be no order as to costs.

(L. Narasimha Reddy,CJ)

I agree.

(Vikash Jain, J)

K.C.jha/-
A.F.R.

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